

REMARKS

Reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

Claims 1-2 are pending in this application and are under examination, with claim 1 being independent. In this Amendment, claim 1 has been amended. No new matter has been added.

In the Office Action mailed January 13, 2006, claims 1-2 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicants respectfully traverse this rejection.

It is respectfully noted that under U.S. patent practice, the written description requirement is satisfied when the specification describes the claimed invention in sufficient detail that one skilled in the art can conclude that the inventor had possession of the claimed invention at the time the application was filed. When claims are amended, the original specification must provide adequate support for the amendments, but there is no requirement that the specification must provide literal support for the amendments (*i.e.*, the claims do not have to use exactly the same language as the specification). With respect to changes in numerical ranges, the analysis of whether the written description requirement has been satisfied must take into account which ranges one skilled in the art would consider inherently supported by the discussion in the original specification. See *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976) (original specification included a range of "25%-60%" and specific examples of "36%" and "50%." The court held that a new claim amendment "between 35% and 60%" complied with the written description requirement.)

Accordingly, Applicants respectfully submit that claims directed to a non-calcined clay composite that includes 55 to 90 wt% clay are supported by the present specification, and do not contain new matter. Applicants expressly reserve the right to pursue claims directed to this subject matter in a future continuation application.

However, in order to advance the prosecution of this application, and without conceding the propriety of the outstanding rejection, claim 1 has been amended to recite that the non-calcined clay composite includes 60 to 90 wt% clay, 2 to 30 wt% lime, 4 to 35 wt% blast furnace slag, 0.04 to 0.9 wt% alkaline chemical, and water as a balance. Applicants respectfully point out that literal support for the amount of clay included in the non-calcined clay composite can be found at least in Example 4 and Table 1 of the claimed invention, at pages 6-7. Applicants also submit that claims 1-2 as presently amended are also fully patentable over the previously applied art for the reasons set forth in the Response dated November 21, 2005.

Entry of this Amendment is proper under 37 C.F.R. § 1.116 since this Amendment: (a) places the application in condition for allowance for reasons discussed herein; (b) does not raise any new issue regarding further search and/or consideration since the Amendment amplifies issues previously discussed throughout prosecution; (c) does not present any additional claims without canceling a corresponding number of finally-rejected claims; and (d) places the application in better form for appeal, should an appeal be necessary. The Amendment is necessary because it is made in reply to arguments raised in the prior rejection. Entry of this Amendment is thus respectfully requested.

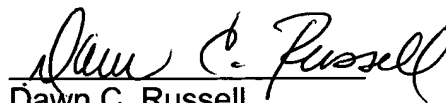
Conclusion

For all of the above reasons, it is respectfully submitted that the pending claims patentably distinguish the present invention from the previously cited references, and fully comply with the written description requirement. Accordingly, reconsideration and withdrawal of the outstanding rejection and an issuance of a Notice of Allowance are earnestly solicited.

Should the Examiner determine that any further action is necessary to place this application into better form, the Examiner is encouraged to telephone the undersigned representative at the number listed below.

In the event this paper is not considered to be timely filed, the Applicant hereby petitions for an appropriate extension of time. The Commissioner is hereby authorized to charge any fee deficiency or credit any overpayment associated with this communication to Deposit Account No. 01-2300, referring to client-matter number 101190-00042.

Respectfully submitted,



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Enclosure: Petition for Extension of Time (one month)